

ESTTA Tracking number: **ESTTA188867**

Filing date: **01/25/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047559
Party	Plaintiff East West Bank
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Date	01/25/2008
Attachments	PetitionersReplySup2ndMot2AmendPlead.pdf (8 pages)(275121 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

EAST WEST BANK,)	
)	
Petitioner,)	
)	
v.)	Cancellation No.: 92047559
)	
THE AIMBRIDGE GROUP,)	
)	
Registrant.)	
)	

PETITIONER’S REPLY IN SUPPORT OF SECOND MOTION TO AMEND PLEADING

Pursuant to 37 C.F.R. § 2.116 and 2.127 of the Trademark Rules of Practice, Petitioner East West Bank (“EWB”), through its undersigned attorneys, submits this Reply in further support of its Second Motion to Amend Pleading and respectfully requests that the Trademark Trial and Appeal Board (the “Board”) grant said Motion.

I. PRELIMINARY STATEMENT

Registrant Aimbridge Lending Group, LLC (“Aimbridge”) erroneously contends that EWB’s proposed amendment to add a claim of fraud at this stage in the proceeding is improperly timed, futile and prejudicial to Aimbridge. These contentions are flawed. EWB’s proposed amendment to include a fraud claim in its petition to cancel the mark POWERBRIDGE should be allowed in that the timing of EWB’s Second Motion to Amend is proper as it was germane to the pending summary judgment motion before the Board to which EWB filed a Cross-Motion for Summary Judgment thereto. See TBMP § 528.03 (citing examples of papers which are or may be germane to a motion for summary judgment such as a cross-motion for summary judgment and a motion for leave to

amend a party's pleading).

Further, EWB's proposed amendment to add a fraud claim is not patently deficient or futile as Aimbridge would like this Board to otherwise believe. EWB sets forth with the requisite particularity the pleading of sufficient facts so that Aimbridge will be apprised of the acts which are alleged to constitute the fraud. W.R. Grace & Co. v. Arizona Feeds, 195 USPQ 670 (Comm'r Pat. 1977) citing Northern Engineering & Plastics Corp. v. Blackhawk Molding Co., Inc., 189 USPQ 734 (N.D. Ill. 1975) ("The rule [FRCP 9(b)] does not require nor make legitimate the pleading of detailed evidentiary matters but the time, place and content of any fraudulent representation should be stated with some specificity.") Here, such facts are that Aimbridge had not used its POWERBRIDGE Mark in connection with all of Aimbridge's services, namely, credit reporting services, matching borrowers with potential lenders in the field of mortgage lending, mortgage procurement for others, and mortgage services, namely, buyer pre-qualification of mortgages for mortgage brokers and banks, as of February 24, 2006, the filing date of Registrant's Application. See EWB's Second Amended Petition to Cancel, §§ 16-20.

Lastly, Aimbridge would not be prejudiced as a result of EWB's proposed amendment to add a fraud claim. EWB was not fully aware of the facts forming the basis of its claim until *after* an internal investigation around the time of filing Aimbridge's Motion for Summary Judgment revealed that Aimbridge had not used the following services in connection with its POWERBRIDGE Mark at the time of filing its application on February 24, 2006: Credit reporting services; Matching borrowers with potential lenders in the field of mortgage lending; mortgage procurement for other others; Mortgages services, namely, buyer prequalification of mortgages for mortgage brokers and banks. In the instant Second Motion to Amend, EWB provided the foregoing explanation for the delay in seeking amendment to add the fraud claim. Any potential prejudice could be mitigated by

reopening the discovery period, which recently closed on December 30, 2007, to allow Aimbridge to conduct discovery on the fraud claim raised in the second amended pleading. See Boral Ltd. v. FMC Corp., 59 USPQ2d 1701 (TTAB 2000) (Board reopened the discovery period for limited purpose of conducting discovery on the new claim).

II. ARGUMENT

A. The Timing Of EWB's Second Motion To Amend Is Proper

Aimbridge's assertion that the timing of EWB's Second Motion to Amend is improper is simply untrue. While the Board did suspend proceedings pursuant to its November 16, 2007 Order and subsequent in time to the November 13, 2007 filing of Aimbridge's Motion for Summary Judgment, EWB was well within its rights to file the instant Second Motion to Amend Pleading, which was germane to the pending summary judgment motion before the Board to which EWB filed a Cross-Motion for Summary Judgment thereto on December 18, 2007. See TBMP § 528.03 (citing examples of papers which are or may be germane to a motion for summary judgment, including a cross-motion for summary judgment and a motion for leave to amend a party's pleading). As EWB filed the second motion to amend prior to the opening of the first testimony period, the motion is timely. See, e.g., Caron Corp. v. Helena Rubenstein, Inc., 193 USPQ 113, 114 (TTAB 1976); Anheuser-Busch, Inc. v. Martinez, 185 USPQ 434, 435 (TTAB 1975). Thus, the timing of EWB's Second Motion to Amend Pleading is indeed proper.

B. EWB's Second Motion To Amend Is Not Futile

Aimbridge needlessly devotes a substantial portion of its brief in opposition to EWB's Second Motion to Amend arguing that EWB fails to allege fraud with particularity or specificity and merely states baseless legal conclusions and on that basis its Second Motion to Amend Pleading should be denied. Aimbridge's assertions are entirely erroneous.

EWB specifically plead in paragraphs 15-22 of its proposed Second Amended Petition to Cancel the allegations of its newly added fraud claim. “[Rule 9(b)] does not require nor make legitimate the pleading of detailed evidentiary matters but the time, place and content of any fraudulent representation should be stated with some specificity.” W.R. Grace & Co. v. Arizona Feeds, 195 USPQ 670 (Comm’r Pat. 1977) citing Northern Engineering & Plastics Corp. v. Blackhawk Molding Co., Inc., 189 USPQ 734 (N.D. Ill. 1975); see W.R. Grace & Co., 195 USPQ at 672 (“[s]etting forth the circumstances with particularity means that the pleader must state the time, place and content of the false representation, the fact misrepresented and what was obtained or given up as a consequence of the fraud”). In this instance, such ultimate facts are that Aimbridge had not used its POWERBRIDGE Mark in connection with all of Aimbridge’s services, namely, credit reporting services, matching borrowers with potential lenders in the field of mortgage lending, mortgage procurement for others, and mortgage services, namely, buyer pre-qualification of mortgages for mortgage brokers and banks, as of February 24, 2006, the filing date of Registrant’s Application. See EWB’s Second Amended Petition to Cancel, §§ 16-20. Registrant’s Application would not have been allowed for all of the services identified therein but for the willful material misrepresentation in the Application regarding the use of the Registrant’s Mark in connection with each of the recited services. Id., § 21. Accordingly, EWB has satisfied the requirements of Fed.R.Civ.P. 9(b) with respect to its fraud claim.

Moreover, Aimbridge’s reliance on the Paul Sullivan decision is inapposite. Unlike the petitioner in Paul Sullivan, EWB was not unaware that Aimbridge has ever used its POWERBRIDGE Mark in interstate commerce in making certain of its averments upon information and belief. The Board in Paul Sullivan found that the allegations set forth in paragraph 5 of the petition (fraud claim) fell short of the standard of particularity required as well as insufficiently

alleging an intent to deceive the Examiner and that the misrepresentations resulted in the issuance and maintenance of respondent's registration. Paul Sullivan Tennis Sportswear, Inc. v. Balth. Blicke's Wwe, 213 USPQ 390 (TTAB 1982). This is not the case in the instant proceeding. In its Second Amended Petition to Cancel, EWB particularly pled specific facts as to the time, place and content of the alleged fraudulent misrepresentation such that Aimbridge will be apprised of the acts which are alleged to constitute the fraud. See EWB's Second Amended Petition to Cancel, §§ 15-22.

In view of the above, EWB's proposed amendment to add a claim of fraud is not futile. Therefore, the Board should allow EWB leave to amend its Petition to Cancel the POWERBRIDGE Mark.

C. EWB's Second Motion To Amend Is Not Prejudicial To Aimbridge

Aimbridge erroneously contends that EWB's undue delay in filing its Second Motion to Amend Pleading equates to prejudice against Aimbridge and on that basis EWB's Second Motion to Amend should be denied. In support of its contention, Aimbridge relies on Trek Bicycle, in which the Board denied opposer leave to amend its opposition to add a dilution claim filed eight months after filing the notice of opposition. This case, however, is distinguishable from the facts at issue here. Unlike the opposer in Trek Bicycle, Petitioner EWB did in fact provide an explanation for not asserting its fraud claim earlier in the instant proceeding:

Subsequent to the filing of Aimbridge's Motion for Summary Judgment, EWB became aware of the additional ground of fraud after an internal investigation revealed that Aimbridge had not used the following services in connection with its POWERBRIDGE Mark at the time of filing its application on February 24, 2006: Credit reporting services; Matching borrowers with potential lenders in the field of mortgage lending; mortgage procurement for other others; Mortgages services, namely, buyer prequalification of mortgages for mortgage brokers and banks.

See EWB's Second Motion to Amend Pleading, at 3. EWB was not aware of Aimbridge's non-use of certain services set forth in its Registration for the POWERBRIDGE Mark until after it conducted

an internal investigation regarding same following the filing of Aimbridge's Motion for Summary Judgment pending before the Board.

Aimbridge's further assertion that "EWB is being dishonest with respect to the timing of discovery of underlying facts upon which it bases its specious allegations of fraud" is not well taken and should be disregarded by the Board. Contrary to Aimbridge's assertion, the sole basis for EWB's fraud claim does not hinge entirely on the specimens submitted in association with Aimbridge's application for the POWERBRIDGE Mark, which fail to demonstrate such use with respect to several of the listed services in Class 36. Rather, Petitioner's counsel conducted their own internal investigation outside of the publicly available prosecution history for the POWERBRIDGE Mark, the results of which revealed that EWB indeed had a basis for asserting a fraud claim in the instant proceeding.

Further, the law is well settled that in granting a motion for leave to amend, the Board in its discretion may reopen the discovery period so as to avoid any potential prejudice to the other party by reason of the amendment. Boral Ltd. v. FMC Corp., 59 USPQ2d 1701 (TTAB 2000) citing Space Base Inc. v. Stadis Corp., 17 USPQ2d 1216 (TTAB 1990) (Board granted opposer's motion to amend filed during its testimony period because it found the interests of justice and judicial economy would best be served thereby and any prejudice to applicant could be mitigated by reopening discovery for applicant). Thus, it cannot be accurately said that EWB's alleged "undue delay" is prejudicial to Aimbridge in this instance. Any prejudice could be alleviated by reopening the discovery period, which recently closed on December 30, 2007, to allow Aimbridge an opportunity to take discovery on the fraud claim raised in the second amended pleading.

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III. CONCLUSION

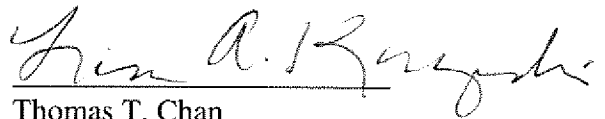
For the foregoing reasons, the Board should grant the instant motion to further amend EWB's pleading pursuant to Fed.R.Civ.P. 15(a).

Respectfully submitted,

CHAN LAW GROUP LLP

Dated: January 25, 2008

By:



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No. 3196507

For the mark POWERBRIDGE

Date Registered: September 1, 2007

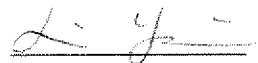
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v.)	
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UNITED STATES PATENT & TRADEMARK OFFICE
Trademark Trial and Appeal Board
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CERTIFICATE OF SERVICE

I certify **PETITIONER'S REPLY IN SUPPORT OF SECOND MOTION TO AMEND PLEADING** that is being served on Applicant by mailing a true and correct copy to the attorneys of record, via First Class Mail, Friday, January 25, 2008, in an envelope addressed as follows:

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